CIV. PROC., § 1925 gives persons and corporations who are taxpayers the right to bring an action like this one; and LAWS 1892 c. 686, § 3 declares a county to be a "municipal corporation for the purpose of exercising the powers and discharging the duties of local government." *Held*, a county has no right to bring this suit under either of the above provisions, and the injunction was denied. *Albany County* v. *Hooker, et al.* (N. Y. 1912) 97 N. E. 403.

A county is primarily a governmental agent, but for the purposes of civil administration it is invested with a few functions of corporate existence. *Hamilton County* v. *Mighels*, 7 Ohio St. 109. *People* v. *Martin*, 178 Ill. 611. *Madden* v. *County of Lancaster*, 27 U. S. App. 528; 1 DILLON, MUN. CORP., Ed. 5, § 35. Inasmuch as counties are a part of the State government they cannot in their governmental capacity maintain any suit against that government, of which they form a part. If a county can maintain a suit such as this at all, it must maintain it in its capacity of a corporation. Independent of the "taxpayers" statute referred to, by the weight of authority no person or corporation could maintain an action against the State to restrain the misappropriation of funds. *Sears* v. *James*, 47 Ore. 50, 82 Pac. 14; *Davenport* v. *Elrod*, 20 S. D., 567, 107 N. W. 833; *Bilger* v. *State*, 60 Wash. 454, 111 Pac. 771; *Long* v. *Johnson*, 70 Misc. 308, 127 N. Y. Supp. 756. *Contra*: *Christmas* v. *Warfield*, 105 Md. 530, 66 Atl. 491. A county is not a taxpayer, however. It is merely the agent of the State for the convenient collection of taxes. *Lorillard* v. *Town of Munroe*, 11 N. Y. 392, 62 Am. Dec. 120; *State* v. *St. Louis County Court*, 34 Mo. 546; I DILLON, MUN. CORP., Ed. 5, § 104.

MUNICIPAL CORPORATIONS—"ULTRA VIRES" TORTS—NUISANCE.—Appellant city owned and operated a stone quarry within its corporate limits for the securing of materials for the improvement of its streets. In the course of this undertaking it engaged in blasting near a public highway. Appellee's horse while passing along this highway, became frightened both by the noise and by bits of stone which were cast upon him, and ran away, causing the injury to appellee for which this action against the city is brought. *Held*, the operation of a stone quarry is not expressly or by implication within the powers delegated to a city. In engaging in such an undertaking, the city was acting entirely *"ultra vires,"* and is not liable for any injury to third parties by reason of such undertaking. Moreover, the operation of such a quarry is a governmental and not a ministerial function; and therefore no liability attaches to the municipality. *City of Radford* v. *Clark* (Va. 1912), 73 S. E. 571.

The court follows what may be called the general rule in cases relating to injuries to third parties in the prosecution by a municipality of an *"ultra vires"* enterprise, namely, that for such injuries the municipality is not liable in damages. *Hoggard* v. *Monroe*, 51 La. Ann. 683, 25 South. 349, 44 L. R. A. 477; *Mayor of Albany* v. *Cunliff*, 2 N. Y. 165; *Duncan* v. *City of Lynchburg* (Va.), 34 S. E. 964, 48 L. R. A. 331; (*Switzer*) *Donable's Adm'r* v. *Town of Harrisonburg*, 104 Va. 533, 52 S .E. 174, 2 L. R. A. (N. S.) 910, 113 Am. St. Rep. 1056; 4 DILLON MUN. CORP., Ed. 5, §§ 1647-50, 1654. But in this case there is the added element that the undertaking amounted to a nuisance. Where special conditions such as this exist, the courts have manifested a ten-

dency to abate somewhat the rigor of the general rule, and have allowed a recovery as for damages caused by maintaining or failing to abate a nuisance. A municipal corporation is bound to keep its streets and sidewalks in a reasonably safe condition, and a failure to perform this duty constitutes a breach of a ministerial duty, and the failure does not rest upon a failure to perform the judicial duty of abating such nuisance. *Mayor of Dalton* v. *Wilson,* 118 Ga. 100, 44 S. E. 830, 98 Am. St. Rep. 101; *Parker* v. *Macon,* 39 Ga. 725, 99 Am. Dec. 486; *Moore* v. *Townsend,* 76 Minn. 64, 78 N. W. 880, 28 Cyc. 1292 (note 38). *Contra, Hubbell* v. *Viroqua,* 67 Wis. 343, 30 N. W. 847, 58 Am. Rep. 866. If it is liable for failure to keep the streets reasonably safe by abating a nuisance when conducted by a private person, it would not seem illogical to hold it liable for failing to abate a nuisance which itself maintains. The right invaded is the right to the safe use of the public streets. For maintaining a nuisance, a municipal corporation has been held to be liable in a civil action the same as a natural person. *City of Valparaiso* v. *Moffitt,* 12 Ind. App. 250, 39 N. E. 909, 54 Am. St. Rep. 522; *City of New Albany* v. *Slider,* 21 Ind. App. 392, 52 N. E. 626. *Contra, Atwood* v. *City of Biddeford,* 99 Me. 78, 58 Atl. 417. And such was the basis of the argument in the dissenting opinion in the principal case. The court, in the prevailing opinion, says that the excavating of rock for street improvements is not a ministerial act but a governmental act, and therefore the municipality is not liable. To say in one breath that a municipal act is absolutely *"ultra vires"* and in the next that it is governmental seems almost paradoxical. Moreover, there is authority for holding that where an undertaking of this kind amounts to a nuisance, failure to abate it is a failure to perform a ministerial duty, for which failure the municipality would be liable. *Dalton* v. *Wilson, supra,* 28 Cyc. 1292 (note 38).

PARENT AND CHILD—NEGLIGENCE OF MINOR—LIABILITY OF FATHER.—Defendant purchased an automobile for the general use of his family but his minor son was the only member of the family licensed to run it. His wife had permission to use the machine whenever she desired, the son being expected to obey his mother if she asked him to take her out in the car. Plaintiff was injured by the machine under circumstances indicating that the son was negligent while driving with his mother and at her request. *Held,* that the father was liable for his minor son's negligence. *Smith* v. *Jordan* (Mass. 1912) 97 N. E. 761.

At common law a parent was not liable for the torts of his minor child merely by reason of their relation, unless it appeared: (1) that the parent directed or counselled the wrongful act; or (2) that he subsequently ratified it; or (3) that the minor, at the time of committing the tort, was acting as the servant of the parent and that the wrongful act was within the scope of such employment. 10 L. R. A. (N. S.) 933. No presumption arises from the mere relationship of parent and child. It must be shown that the child was acting for the parent and with the latter's approval in order to make the parent responsible. *Ferguson* v. *Terry,* 1 B. Mon. 96; *Kumba* v. *Gilham,* 103 Wis. 312, 79 N. W. 325; *Shockley* v. *Shepherd,* 9 Houst. (Del.)